REMARKS

In this response to the above identified Office Action, Applicants respectfully request reconsideration in view of the above amendments and following remarks. Claims 1, 2, 7, 8, 12, 16, 20, 24, 27, 28, 29, 34, 35, 39, and 43 have been amended. Claims 3, 9, 30, and 36 have been cancelled. No claims have been added. Accordingly, claims 1, 2, 4-8, 10-29, 31-35, and 37-43 are pending in the application.

I. Claim Amendments

Applicants have amended claims 1, 7, 28, 34, 39, and 43 to include "the time period beginning upon receiving the notification of death" or analogous elements. Support for these amendments may be found in the specification at paragraph 0048. Applicants have also amended claims 1, 2, 8, 12, 16, 20, 24, 27, 28, 29, 35, and 39 to clarify claim language.

Applicants have amended claim 34 to correct the typographical omission of the word "by," and claim 39 to correct the typographical omission of a semicolon.

II. Claims Rejected Under 35 U.S.C. § 102

Claims 1, 2, 4-6, 16-29, 31-33 and 39-43 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,440,726 issued to Fuchs et al. (hereinafter "Fuchs"). Applicants respectfully disagree for the following reasons.

To anticipate a claim, a single reference must disclose each element of that claim. Claim 1, as amended, includes "clearing the first set of data by the second network process if a time period expires, the time period beginning upon receiving the notification of death; and synchronizing by the second network process the first set of data with a second set of data if the time period does not expire" (emphasis added). Applicants believe that Fuchs does not teach these elements of the claim. The cited parts of the reference (col. 8 lines 29-57, col. 24 lines 33-

43, col. 27 lines 65-68, col. 10 line 14 – col. 11 line 18, and col. 25 lines 35-65) teach the use of checkpoints and recovery line calculation, but do not disclose the above-mentioned elements of claims 1 and 28.

In the Response to Arguments section, Examiner states that Fuchs, at col. 7, lines 40-60; col. 11, lines 44-53; and col. 14, lines 38-47, teaches that "the watchdog determines that a process is hung or has crashed if the watchdog fails to receive a heartbeat signal from the process before the specified time interval." (Office Action, p. 2.) This time interval, however, begins at the receipt of one heartbeat signal, so as to monitor the interval between two heartbeat signals received, each heartbeat signal signifying that the process is still alive. Thus, the cited time interval does not "begin[] upon receiving the notification of death," as recited in claim 1. Also, Examiner states that Fuchs, at col. 9, lines 11-36; col. 10, lines 31-40; and col. 11, lines 13-18, teaches that "upon detecting a faulted process, the watchdog will initiate a rollback procedure." (Office Action, p. 2.) Since in the reference, a faulted process is detected when the time interval expires, the rollback procedure takes place when the time interval expires, and thus Examiner has not established that the reference teaches "synchronization . . . if the time period does not expire" (emphasis added), as recited in the claim.

Further, Applicants disagree with Examiner's arguments made in regard to the § 103 rejection of cancelled claims 3, 9, 30, and 36, which included elements similar to "the time period beginning upon receiving the notification of death," as recited in amended claim 1. Examiner cites U.S. Patent No. 5,938,775 issued to Damani et al. (hereinafter "Damani"), at col. 2, lines 35-54, to teach a "method . . . wherein expiration of the time period is determined with a timer maintained after the network process is determined to be dead." (Office Action, p. 9.) Applicants respectfully submit, however, that this section of Damani discusses a rollback process upon restart of a process, "[w]hen the watchdog process detects a process failure," Damani, at

col. 2, lines 36-38, but does not mention any timer being maintained after a network process is determined to be dead.

Therefore, Fuchs does not teach each of the elements of claim 1. Accordingly, reconsideration and withdrawal of the anticipation rejection of this claim are requested.

Independent claims 16, 20, 24, 28, 39, and 43 include elements analogous to those of claim 1. Thus, at least for the reasons mentioned above in regard to claim 1, Fuchs does not teach each of the elements of these claims. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claims 2, 4-6, 17-19, 21-23, 25-27, 29, 31-33, and 40-42 depend from independent claims 1, 16, 20, 24, 28, 39, and 43 respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to the independent claims, these claims are not anticipated by Fuchs. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

III. Claims Rejected Under 35 U.S.C. § 103

Claims 7, 8, 10, 11, 34, 35, 37, and 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,681,389 issued to Engel et al. (hereinafter "Engel") in view of Damani. Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims.

Claims 7 and 34, as amended, include "if a first set of data is generated by the first network process before a time period expires, the time period beginning upon receiving by the second network process a notification of death of the first network process, then synchronizing by the second network process the first set of data with a second set of data" (emphasis added).

Applicants believe that these elements of the claims are not taught or suggested by Engel in view of Damani. For reasons discussed above in regard to claim 1, Applicants disagree with Examiner's arguments of the § 103 rejection of cancelled claims 3, 9, 30, and 36, which included elements similar to "the time period beginning upon receiving by the second network process a notification of death of the first network process," as recited in amended claim 7. Further, Examiner has not relied upon and Applicants are unable to discern any part of Engel that teaches these elements. Thus, Engel in view of Damani does not teach or suggest each of the elements of the claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 8, 10, 11, 35, 37, and 38 depend from independent claims 7 and 34, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 7 and 34, Engel in view Damani does not teach or suggest each of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,694,450 issued to Kidder et al. (hereinafter "Kidder") in view of Damani. (Although Examiner states initially on p. 10 of the Office Action that the rejection is over Damani in view of Kidder, the discussion of the rejection is apparently based on one over Kidder in view of Damani.) Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims.

Claim 12 recites "second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the time period beginning upon receiving a

notification of death of the first network process." Applicants believe that these elements of the claims are not taught or suggested by Kidder in view of Damani. Examiner cites Damani for "rollback-synchronization among the processes . . . if the time period expires" (emphasis added) (Office Action, p. 9). Claim 12, however, recites a "second network process to synchronize for itself the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired, the time period beginning upon receiving a notification of death of the first network process" (emphasis added). Examiner has failed to allege and Applicants have been unable to discern any part of Kidder or Damani that teach these elements of claim 12.

In the Response to Arguments section, Examiner states that Kidder, at col. 3, lines 42-52; col. 3, line 63 to col. 4, line 6; col. 40, lines 6-18, col. 42, line 43 to col. 43, line 12; and col. 46, lines 35-62, teaches "if a primary instantiation fails, it can be restarted . . . and then initiate an audit procedure to resynchronize with the other processes," and that "[t]hus . . . the primary process is able to synchronize itself with the backup process within a defined synchronization time" (emphasis added). (Office Action, p. 4.) Kidder, at col. 40, lines 11-13, discloses that "[t]he time required to bring the software on the backup element to an 'active state' is referred to as synchronization time." As recited in claim 12, however, the synchronization does not begin until it is determined that a time period has not expired. Hence, the synchronization time of Kidder does not teach "synchronizing . . . upon determining a time period has not expired," as recited in claim 12.

Thus, Kidder in view of Damani does not teach or suggest each of the elements of the claim. Accordingly, reconsideration and withdrawal of the obviousness rejection of the claim are requested.

Claims 13-15 depend from independent claim 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 12, Damani in view Kidder does not teach or suggest each of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If Examiner believes that a telephone conference would be useful in moving the application forward to allowance, Examiner is encouraged to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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Dated: 6/18, 2007

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I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450.

Amber Saunders 6/18/07

Amber Saunders Date